IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

APPEAL FROM ORDER NO.656 OF 2005

Bapu Vithu Salunkhe
(Since deceased through heirs
& legal representatives)

1A Balasaheb Bapu Salunkhe & ors. .. Appellants

v/s.

Anna Sakharam Patil
(Since deceased through heirs &
legal representatives)

1A. Smt.Gangubai Anna Patil & ors. .. Respondents

Mr.Anilkumar Patil for the appellants.

CORAM : B.H.MARLAPALLE, J.

DATED : 10th October, 2005

P.C.

Heard Mr.Patil, the learned counsel for the appellants who had instituted regular civil suit No.64 of 1976. He, therefore, filed regular civil appeal No.341 of 1986 which was dismissed on merits on 3.3.1992. Review application No.1 of 1992 came to be filed in Regular Civil Appeal No.341 of 1986 but this review appeal also came to be dismissed in default on 14.10.1998. Under these circumstances, Miscellaneous Civil Application No.91 of 1999 came to be filed under Order 9 Rule 9 read with Order 41 Rule 19 of CPC for restoration of the review application.

2. When the appeal was decided on merits on 3.3.1992, the plaintiff had a remedy of second appeal and instead of invoking the same remedy, he preferred to file review application which was dismissed in default on 14.10.1988.

3. There is no dispute that an application filed by the plaintiff for restoration of the review application was also dismissed. Admittedly, the plaintiff had a remedy of second appeal and therefore, the review petition and the restoration applications could not have been entertained. The appeal is, therefore, dismissed and the plaintiff is not precluded from invoking the alternative remedy that may be available in law.

(B.H. MARLAPALLE, J.)